

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

November 6, 2006

CALL TO PODIUM:

Cathy G. Borten
City Attorney

RESPONSIBLE STAFF:

Cathy G. Borten
City Attorney

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
x	Ordinance - INTRODUCTION
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

INTRODUCTION OF AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS SECTION 15-4 OF THE CITY CODE, ENTITLED "LOITERING," SO AS TO CLARIFY EXISTING LANGUAGE WITH REGARD TO PROHIBITED CONDUCT, AND SECTION 15-9, ENTITLED "SOLICITATION IN ROADWAYS," SO AS TO EXPAND THE APPLICABILITY OF THE CITY'S PROHIBITION ON SOLICITATION SPECIFIC TO THIS CHAPTER

SUPPORTING BACKGROUND:

Attached please find a draft of a proposed anti-solicitation ordinance. Among other things, this draft expands upon the current ordinance found in Chapter 15, Section 15-9. An earlier draft was submitted to the Council in October as an indication of the direction staff was headed on the issues. Since that time, additional research has led to some changes to the draft, including handling the revisions to Section 15-9 as only a repeal and reenactment rather than also creating a new Section 15-9.1. These changes have been designed to help the City more accurately achieve the goal of increasing traffic and pedestrian safety within a legally sound framework.

Staff has included a findings section based on an understanding of the Council's interest in ensuring traffic and pedestrian safety. However, it is anticipated that the findings may be more fully refined by the Council during the public hearing process once the ordinance is introduced.

A comment was made from the public after the initial draft was submitted that no penalty section was included in the draft. Please note that this ordinance is part of Chapter 15. Chapter 15 includes its own penalty section, found in section 15-19. Section 15-9 states that a person violating Chapter 15 "shall be guilty of a misdemeanor, punishable as provided in section 1-7." With the provisions of sections 15-19 and 1-7 applicable, there was no need to include a separate penalty provision within section 15-9.

continued.....

DESIRED OUTCOME:

Introduce Ordinance and notify the public of the public hearing scheduled for November 20, 2006.

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Supporting Background Cont'd

The initial draft contained language tying enforceability to the establishment of an employment center. This language does not appear in the current draft. It is staff's position that there are sufficient alternatives available for conducting the activities covered by this ordinance that such language is not required.

If the proposed ordinance is consistent with the Mayor and City Council's guidance, the draft ordinance could be introduced this evening.

Ordinance No. _____

AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS SECTION 15-4 OF THE CITY CODE, ENTITLED "LOITERING," SO AS TO CLARIFY EXISTING LANGUAGE WITH REGARD TO PROHIBITED CONDUCT, AND SECTION 15-9, ENTITLED "SOLICITATION IN ROADWAYS," SO AS TO EXPAND THE APPLICABILITY OF THE CITY'S PROHIBITION ON SOLICITATION SPECIFIC TO THIS CHAPTER

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that certain sections of Chapter 15 of the City Code, are hereby repealed and reenacted with amendments to read as follows:

Chapter 15

OFFENSES – MISCELLANEOUS

* * * * *

Sec. 15-4 Loitering.

(a) * * * *

(b) *Prohibited conduct.*

(1) * * * *

(2) * * * *

(3) It shall be unlawful for any person to ~~loiter~~ remain without lawful business within one hundred (100) feet of any exterior portion of a business establishment selling alcoholic beverages for off-premises consumption, and to fail to obey the direction of a uniformed police officer or upon identification of a properly identified police officer not in uniform, to move on, where not to obey such direction either endangers the public peace or inhibits unimpeded movement of pedestrians and customers along any public way.

* * * * *

* * * * *

Sec. 15-9 Solicitation in Roadways

(a) Findings

(1) The City Council finds that increased solicitation, as defined herein, by pedestrians and vehicle drivers, has caused a significant attendant increase in safety hazards within the City.

(2) Pedestrians' engaging in such soliciting from occupants of vehicles distracts drivers from their primary duty to watch traffic and be alert for potential hazards in the roadways; to observe all traffic control signs and to be prepared to move through the City safely; results in the delay and obstruction of the public's free flow of travel; and results in congestion and blockage of the streets, parking area, driveways, and sidewalks.

(3) Such soliciting by occupants of vehicles to pedestrians on roadways, sidewalks, driveways, parking areas, or alleys distracts drivers from their primary duty to watch other vehicles or pedestrians and to move through the City safely, and can cause pedestrians to enter travel lanes creating additional hazards.

(b) Purpose and Intent

It is the purpose and intent of this Ordinance to provide a mechanism to ensure the safety and well being of pedestrians, vehicle drivers and solicitors while occupying roadways, sidewalks, driveways, parking areas or alleys within the City by prohibiting the conduct which creates significant traffic and pedestrian safety hazards.

(c) Definitions.

Words not defined in this Chapter shall have the meaning ascribed by the City code, and if not included in the City code, shall have their ordinary and customary meaning.

1. *Solicit/attempt to solicit:* For purposes of this Chapter only, solicit or attempt to solicit shall be defined as and/or include the act of requesting, announcing, or offering, by any means, the availability for or the availability of employment; any action which seeks to offer, contract for, purchase, sell, or procure employment; any request for money or other property; any attempt to contribute money or other property. The following acts may indicate a solicitation as defined in this Chapter: approach between or among individuals; participation in discussions undertaken in response to the solicitation by another person; departing the place of approach together; utilization of a vehicle in the approach or departure. Conduct as defined herein may be deemed to be a solicitation, whether or

not an actual employment relationship is created, or money or other property is actually contributed. Solicitation as defined in this Chapter does not include any activity conducted within or in accordance with the procedures of a lawfully approved formal assembly site for day workers, or other lawfully approved employment center use, issued a use and occupancy permit.

2. *Employment center:* an established location, issued a use and occupancy permit, where employment opportunities are coordinated between persons seeking employment and persons seeking to hire persons for employment.

3. *Employment:* services, industry, or labor performed by a person for wages, a fixed sum, other compensation or thing of value, under any contract for hire, whether oral, written, express or implied.

4. *Donation.* – unilateral gift of money or other thing of value without an expectation of receiving goods, services or thing of value in return.

5. *Alms* - charitable donations for the relief of the poor.

6. *Subscriptions* – binding pledge or commitment.

(d) *Prohibited Conduct*

1. It shall be unlawful for any person, while occupying as a pedestrian any portion of a public or private roadway, sidewalk, driveway, parking area, or alley, including drive lanes, medians and curbs, to solicit or attempt to solicit employment, donations, alms or subscriptions, from any pedestrian who temporarily exits a vehicle, or from any person occupying or traveling in a vehicle on a roadway, sidewalk, driveway, parking area, or alley.

2. It shall be unlawful for any person occupying or traveling in a vehicle, or who temporarily exits a vehicle, to solicit or attempt to solicit employment, donations, alms or subscriptions, from a person who is a pedestrian on a public or private roadway, sidewalk, driveway, parking area, or alley, including drive lanes, medians and curbs.

(e) *Severability*

If any word, sentence, paragraph, or other portion of this ordinance is deemed to be invalid or unenforceable for any reason by a court of competent jurisdiction, the City Council declares its intent that all remaining words, sentences, paragraphs or portions of the ordinance not

held to be invalid or unenforceable shall remain in full force and effect, and shall be so construed, as if the original ordinance did not contain the invalid or unenforceable language.

ADOPTED this ____ day of _____, 2006 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2006. APPROVED by the Mayor of the City of Gaithersburg, this ____ day of _____, 2006.

Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2006, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the ____ day of _____, 2006. This Ordinance will become effective on the ____ day of _____, 2006.

David B. Humpton, City Manager

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by Amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.